ATTORNEYS FOR APPELLANT:

JEFFREY P. SMITH
W. RANDALL KAMMEYER
Hawk, Haynie, Kammeyer &
Chickedantz, LLP
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

SCOTT M. COHEN
JOHN D. BARKER
HARRY C. BRADLEY
Krohn & Moss, LTD
Chicago, Illinois

IN THE
COURT OF APPEALS OF INDIANA

DAIMLERCHRYSLER CORPORATION,	)	
Appellant-Defendant,	)	
vs.	)	No. 29A05-0509-CV-501
LORA WHITE,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Steven R. Nation, Judge
Cause No. 29D01-0503-PL-227

November 2, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

DaimlerChrysler Corporation ("DaimlerChrysler") appeals the trial court's denial of its motion to dismiss Lora White's ("White") complaint, which alleges violations of the Magnuson-Moss Warranty Act ("MMWA"), and to compel arbitration of those claims. For the reasons we set forth today in the companion case of *Walker v. DaimlerChrysler Corp.*, No. 27A02-0507-CV-596, --- N.E.2d --- (Ind. Ct. App. Nov. 2, 2006), we reverse the decision of the trial court and remand this cause with instructions to the trial court to grant DaimlerChrysler's Motion to Dismiss and Compel Arbitration.

Facts and Procedural History

On December 26, 2003, White purchased a 2004 Dodge Durango ("Durango") from Champion Chrysler Dodge in Indianapolis ("Champion"). The purchase included certain warranties. White purchased the Durango pursuant to DaimlerChrysler's Employee Advantage Chrysler Group Employee Purchase/Lease Program ("Program"). The Program offers customers a substantial discount by allowing them to purchase or lease new vehicles at the employee price. To participate in the Employee Program, White signed a DaimlerChrysler Employee Advantage Chrysler Group Employee Purchase/Lease Claim Form ("Claim Form").

At the top of the Claim Form, in bold print, was the following statement: "**THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.**" Appellant's App. p. 35. The Claim Form also contains a mandatory arbitration clause, which provides, in pertinent part:

> I understand that, *in consideration for the discount received*, **I will not be able to bring a lawsuit for any disputes relating to this vehicle. Instead,**

> **I agree to submit any and all disputes through the DaimlerChrysler Vehicle Resolution Process, which includes mandatory arbitration that is binding on both DaimlerChrysler and me**.
> . . .
>
> I acknowledge that this Form evidences a transaction involving interstate commerce, and, therefore, the Federal Arbitration Act ("FAA") (9 U.S.C. § 2 et. seq.) shall govern the interpretation, enforcement and proceedings of arbitration.

Id. (italics added). The next clause of the Claim Form provides, in pertinent part:

> I represent to DaimlerChrysler Corporation that, before purchasing or leasing a vehicle under the Program, I received and read the Program Rules and Provisions ("Rules"), specifically including a copy of the document entitled "Vehicle Resolution Process – Binding Arbitration." I hereby acknowledge that (1) I understand the Rules (2) I agree to be bound by them and will comply with them[.]

Id. The Employee Rules and Provisions ("Rules") include a Legal Agreement that details the mandatory binding arbitration procedure. The Legal Agreement provides that participants in the Program "agree that binding arbitration is solely and exclusively the final step for resolving any warranty dispute concerning vehicles purchase or leased under the Program. **They may not bring a separate lawsuit**." *Id*. at 40. Champion employee Arlene Mouland ("Mouland") also signed the Claim Form, thereby representing that a copy of the Rules had been provided to White.

Shortly after White's purchase, several defects arose with the Durango, including a defective engine and/or electrical system. White took the Durango to Champion and other DaimlerChrysler authorized service dealers for repairs, but the repairs were not completed to her satisfaction. As such, White's attorney wrote a letter to DaimlerChrysler "revoking her acceptance of the vehicle" and "demand[ing] the return of all funds paid towards [the Durango], the cancellation of the contracts, and compensation

for her damages." Appellant's App. p. 19. DaimlerChrysler failed to comply with White's demands, so White filed a lawsuit. Count I alleged a breach of written warranty pursuant to the MMWA; Count II alleged a breach of an implied warranty of merchantability pursuant to the MMWA; and Count III purported to revoke White's acceptance of the Durango pursuant to section 2310(d) of the MMWA.

In response to White's complaint, DaimlerChrysler filed a Motion to Dismiss and Compel Arbitration, citing the mandatory arbitration language contained in both the Claim Form and the Rules. White responded that the MMWA does not permit binding arbitration agreements. The trial court denied DaimlerChrysler's motion then certified its order for interlocutory appeal. This Court accepted jurisdiction of DaimlerChrysler's appeal under Indiana Appellate Rule 14(B).

Discussion and Decision

On appeal, DaimlerChrysler argues that the trial court erred in denying its Motion to Dismiss and Compel Arbitration. Specifically, it contends that binding arbitration agreements are enforceable under the MMWA. The parties' arguments on appeal are the same as those we address today in the companion case of *Walker v. DaimlerChrysler Corp.*, No. 27A02-0507-CV-596, --- N.E.2d --- (Ind. Ct. App. Nov. 2, 2006). For the reasons we set forth in that opinion, we agree with DaimlerChrysler that the MMWA permits binding arbitration. Therefore, we reverse the decision of the trial court and remand this cause with instructions to the trial court to grant DaimlerChrysler's Motion to Dismiss and Compel Arbitration.[1]

[1] In her brief on appeal, White argues that she cannot be compelled to arbitrate her claim under the Indiana Motor Vehicle Protection Act ("Indiana Lemon Law") because the Indiana Attorney General

Reversed and remanded with instructions.

BAKER, J., and CRONE, J., concur.

has not certified DaimlerChrysler's arbitration program. Initially, we note that White's complaint does not include a claim under the Indiana Lemon Law. Even if it did, however, we reject White's argument for the reasons we state today in *Walker*, No. 27A02-0507-CV-596, slip op. at 15-16, --- N.E.2d ---.